REMARKS

The non-final Office Action, mailed April 7, 2006, considered and rejected claims 1-18, 30, 36-38 and 40-45. Claims 1, 3, 5, 7-11, 14-16, 18, 36-38 and 41-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carr (U.S. Patent Publ. No. 2003/0133043) in view of Kuzma (U.S. Patent No. 5,889,950) and the ATVEF specification, and further in view of Keronen et al. (U.S. Patent No. 6,567,530). Claims 17 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carr (U.S. Patent Publ. No. 2003/0133043) in view of Kuzma (U.S. Patent No. 5,889,950), the ATVEF specification, and Keronen et al. (U.S. Patent No. 6,567,530), and further in view of Official Notice. Claims 2, 4, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carr (U.S. Patent Publ. No. 2003/0133043) in view of Kuzma (U.S. Patent No. 5,889,950), the ATVEF specification, and Keronen et al. (U.S. Patent No. 6,567,530), and further in view of Valdez, Jr. (U.S. Patent No. 6,426,778). Claims 6, 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carr (U.S. Patent Publ. No. 2003/0133043) in view of Kuzma (U.S. Patent No. 5,889,950), the ATVEF specification, and Keronen et al. (U.S. Patent No. 6,567,530), and further in view of Goodman et al. (U.S. Patent No. 6,427,238).[1] No grounds of rejection were set forth for claim 45.

By this paper, claim 1 has been amended, and no claims have been added or cancelled.[2] Accordingly, following this paper, claims 1-18, 30, 36-38 and 40-45 remain pending, of which, claims 1 and 38 are the only independent claim at issue.

The present invention is generally directed to embodiments for delivering enhanced programming content. As recited in claim 1, for example, the claimed method includes the act of obtaining a schema document having various data structures, including a timeline data structure that specifies a specific time and order for delivering the other structures of the schema document (e.g. a trigger data structure, an announcement data structure, and a package data structure). The timeline data structure can also include a loop attribute that can be used to

[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments or amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Independent claim 1 has been amended merely to clarify the claim, without introducing any new matter. In particular, the claim language has been amended to clarify that the instructions in the timeline data structure are the same as those including a loop attribute and that the specific delivery times are defined relative to a specific start time. In addition, formatting changes have been made so as to present the claim in a format that can more easily be understood and interpreted. Accordingly, Applicants submit that the amendments to claim 1 are non-substantive and do not, therefore, add any new ground for rejection.

prevent delivery of the enhanced programming content multiple times. The timeline data structure is analyzed and the authenticity of the schema document is verified against a stored standardized schema document. Thereafter, the various structures of the schema document are delivered as specified by the timeline. As further clarified by the recited claims, the schema document is generic and non-specific to hardware and software modules associated with authoring tools used to create enhanced programming content, such that delivery of the enhanced programming content is multi-platform compatible.

Applicant respectfully submits that the pending claims are not made obvious by the cited art of record. In fact, Applicant submits that a prima facie case of obviousness was not established for the claims presented in the last amendment.

Applicant submits that a prima facie case of obviousness has not been established because the references, alone and in combination, fail to "teach or suggest all the claim limitations," as required by statute. M.P.E.P. § 2143. In particular, among other things, the cited art fails alone and in combination to teach or suggest a schema document that includes a timeline data structure specifying specific times defined relative to a specific start time and a particular order for delivering each of the trigger, announcement and package data structures to the receiver, as claimed in combination with the other recited elements.

The Office Action acknowledges the foregoing limitations of the previously cited art on page 4. To overcome this failure, the Office Action now recites a new reference, Kuzma, as apparently teaching the timeline data structure specifying specific times relative to a specific start time for determining the order of delivering each of the trigger, announcement and package data. Applicant respectfully submits, however, that Kuzma does not teach or suggest these things.

Applicant has reviewed the cited reference and has been unable to find any disclosure that would support the assertion in the Office Action that Kuzma teaches or suggests, within a schema document, "a timeline data structure containing instructions regarding timing for the delivery of enhanced program content, the timeline data structure specifying specific times defined relative to a specific start time, and a particular order for delivering each of the trigger, announcement and package data structures to the receiver, as claimed.

To the contrary, Kuzma appears directed to HTML scripts (i.e., web pages) that are sent to local broadcast affiliates and users to alert them as to when specific programming and web

pages will be broadcast. (Col. 5, ln. 62 to Col. 6, ln. 4). In other words, Kuzma describes HTML pages that are accessible through an Internet browser and essentially act as a program guide to identify future programming and enhanced programming.

To do this, the national network compiles listing information about each future television program and web page. (Col. 5, ll. 63-65). The compiled information is placed in the HTML script and includes: (i) a name of a television program or web page that will be broadcast; (ii) the source of the content; (iii) a description of the content; and (iv) a time stamp of "programs or web pages" identifying "when the program or web page is to be broadcast." (Col. 5, ln. 65 to Col. 7, ln. 1; Col. 7, ll. 27-28). In this manner, the local affiliate can use the time stamp to determine when it may insert its own web pages into the national programming. (Col. 7, ll. 31-34).

This disclosure, however, is directed to determining when *content* (television or enhanced content such as web pages) is to be provided. Kuzma does not, however, provide a timeline data structure for determining when and in what order "the trigger, announcement and package data structures" are delivered to the receiver, as claimed. In fact, some of these elements are not even considered by Kuzma, such as, but not limited to, announcements and triggers.

In addition, even were Kuzma to teach specifying the delivery time and order of delivery of trigger, announcement, and package data structures, to which Applicant does not acquiesce, Kuzma fails to teach or suggest a time stamp that specifies a specific time for delivery of such data structures "relative to a specific start time." In particular, the time stamp is merely described as a defining the time when the program or web page is to be broadcast. Kuzma does not define the time stamp as providing any specific time that is defined "relative to a specific start time," as claimed. In fact, and to the contrary, Kuzma notes that in scheduling programming, an "absolute time" for content intervals is known, and that national network sources provide an "absolute time reference" used by the local affiliates to coordinate local programming.

Accordingly, inasmuch as the Examiner has acknowledged that the previously cited art does not disclose these elements, and it should be clear from the foregoing that Kuzma also fails to disclose or suggest these claim elements corresponding to the timeline data structure, such that a prima facie case of obviousness has not been established. Applicant respectfully submits, however, that this is not the only reason the claims are distinguished over the art of record.

Although it is not necessary, for at least the foregoing reasons, it will be noted that there must also be a motivation to combine the references, which the Office Action fails to provide. In particular, the motivation for making such a combination must come from the references themselves, and not the Applicant's own application, otherwise such a combination represents impermissible hindsight. In particular, the "teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. M.P.E.P. § 2143; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

On pages 4 and 5 of the Office Action, the only motivation to combine Carr and Kuzma is stated. In particular, the Office Action notes:

> it would have been obvious to one of ordinary skill in the art to implement Carr with a schema document that is generic and non-specific to hardware that comprises a timeline data structure specifying specific times relative to a specific start time and a particular order for delivering each of the trigger, announcement and package data structures to the receiver and analyzing the timeline data structure to determine when to deliver each trigger, announcement and package data structures for the stated advantage.

In other words, the Office Action quotes the *Applicant's* claim language as providing the motivation to combine the references. No motivation to combine references has been provided "from the prior art" as required, such that it appears that the combination of references is based on impermissible hindsight based on Applicant's invention, rather than the state of the art or express teachings of the art at the time Applicant filed its application.

Moreover, Applicants submit that even if a motivation was provided to combine the teachings of Carr and Kuzma, the motivation or suggestion would not produce the claimed invention. In particular, Carr is directed to a system for communicating programming and enhancement data to a consumer to a consumer by transmitting the data according to the ATVEF standard. In contrast, and as described above, Kuzma is directed to an HTML script which is provided to the local broadcaster to allow the broadcaster to insert web pages or programming into the broadcast and thereby send the information to the consumer. Stated another way, Kuzma and Carr take places in alternative realms such that Kuzma informs the local broadcaster of the schedule of programming, while Carr discloses how that information is sent by the local broadcaster to the consumer. Accordingly, adding Kuzma to Carr merely provides, at a front end, a manner of informing the local broadcaster of what programming to send and when to send

it, but without altering the manner in which Carr actually delivers the enhancement data to the consumer.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should it arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine references with the other art of record. Nevertheless, a few of the dependent claims will be addressed by the following remarks, to even further distinguish the claimed invention over the art of record.

Claim 45, for example, clarifies that the enhanced programming content is delivered in an electronic mail message separately from audio and video programming that it will be displayed with. The cited references fail to consider such an embodiment, and the Office Action fails to even address the claim on any grounds.

Claims 41, 42 and 44 also do not appear to have been fully considered in the Office Action. In particular, the Office Action merely states that these claims are met by the discussion of claim 1. (Office Action, p. 14). In this regard, Applicant notes that in order to establish a prima facie case of obviousness, the prior art references, when combined, must teach or suggest all of the claim limitations. (M.P.E.P. § 2143). Here, the aforementioned dependent claims further limit claim 1 by adding that the timeline specifies a deliver-by time (claim 41), specifies which of the trigger and package data structures are delivered first (claim 42), and specifies a number of frames after which the structures will be delivered (claim 44). Such elements were not present, either expressly or inherently, in claim 1, nor were they addressed in the rejection of claim 1. Accordingly, a prima facie case of obviousness has not been established.

With respect to claim 43, the Office Action notes that it would have been clearly obvious to zero the timeline at the beginning of the programming to provide a time reference relative to the programming. In this regard, Applicant disagrees. Initially, Applicant points out that that

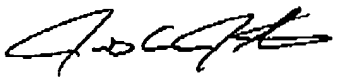
something may be possible does not make it obvious. In particular, the "fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie obviousness*." M.P.E.P. § 2143.01. This is true even if all of the elements are taught in the cited art, which they clearly are not in this case. In fact, the cited art (Kuzma) actually teaches that absolute time references are used, such that there would be no reason to zero a timeline to "provide a time reference relative to the programming." Accordingly, even if zeroing the timeline data structure may provide a tie reference relative to programming, the cited art needs to teach or suggest such, and there needs to be a motivation for doing so which is found in the prior art, particularly when there are numerous other ways to provide references to programming without zeroing a timeline data structure.

For at least these reasons, Applicant respectfully submits that the cited art, alone and in combination, fails to make obvious the claimed invention and that all of the pending claims (1-18, 30, 36-38 and 40-45) should now be found in condition for allowance.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 7th day of July, 2006.

Respectfully submitted,



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